NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH GLAUDE,

Defendant and Appellant.

B289780 (Los Angeles County Super. Ct. No. MA011552-01)

APPEAL from a judgment of the Superior Court of Los Angeles County. Shannon Knight, Judge. Affirmed.

Law Offices of John F. Schuck and John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

In 1980, appellant Kenneth Glaude, then 16 years old, was convicted of murder (Pen. Code, § 187, subd. (a)). His sentence of life without parole was modified to 25 years to life, plus a 12-year determinate term. In 1996, while still in prison, he pled nolo contendere to a charge of possession of marijuana in a jail facility in violation of section 4573.6, and was sentenced to an additional four years, to run consecutively. ²

In 2017, appellant was found suitable for parole on the original offense, but was retained in custody because the term for the section 4573.6 violation had not been served. In February 2018, appellant petitioned to have the section 4573.6 offense dismissed and to be resentenced under Health and Safety Code (HSC) section 11361.8, subdivisions (a) and (b), provisions added by Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (the Act), approved by voters on November 8, 2016. As amended in 2017, HSC section 11362.1 permits persons over the age of 21 to "[p]ossess, process, transport, purchase, obtain, or give away" small amounts of cannabis and to "[s]moke or ingest cannabis or cannabis products." HSC section 11361.8, subdivision (a) provides that a person "currently serving a sentence for a conviction . . . who would not have been guilty of an offense, or who would have been guilty of a lesser

Undesignated statutory references are to the Penal Code.

² Section 4573.6 prohibits possession of controlled substances or paraphernalia while in prison.

offense under [the Act] had that act been in effect at the time of the offense" may "petition for a recall or dismissal of sentence " Subdivision (b) provides that if the petitioner satisfies the criteria of subdivision (a), "the court shall grant the petition to recall the sentence or dismiss the sentence . . . unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety."3 HSC section 11362.45 provides that "Section 11362.1 does not amend, repeal, affect, restrict, or preempt: ¶...¶...Laws pertaining to smoking or ingesting cannabis or cannabis products on the grounds of, or within, any facility or institution under the jurisdiction of the Department of Corrections and Rehabilitation . . . referenced in Section 4573 of the Penal Code." The court denied the petition, explaining in its order that appellant "was convicted of an offense that is not eligible for the requested relief."

Appellant noticed an appeal. After reviewing the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). On September 26, 2018, we sent a letter to appellant's last known address, advising him that he had 30 days within which to submit by brief or letter any

Appellant also sought to redesignate or dismiss the section 4573.6 offense under HSC section 11361.8, subdivisions (e) and (f), which do not apply unless the petitioner has "completed his or her sentence"

contentions or argument he wished this court to consider. We received no response.

This court has examined the entire record, and is satisfied no arguable issues exist. Appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment. (*Smith v. Robbins* (2000) 528 U.S. 259, 278.)

DISPOSITION

The judgment is affirmed.

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MA	NEI	JΑ.	Ρ.	J

We concur:

COLLINS, J.

DUNNING, J.*

^{*}Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.